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FURTHER REMARKS

As may apply to the present claims, the rejections set forth in Paper No. 6 under 35 USC 103(a) of claims 1-3, 9-13, 15, 16 and 23 over over Cline, US 6266929, in view of Corvi, US 5879499, in view of Negre, US 5400552; of claims 14 and 17 over Cline in view of Corvi and Negre in view of Smeja et al., US 5471799; and of claims 21, 22, 24 and 25 over Cline in view of Negre, are respectfully traversed. No proposed combination teaches nor suggests to a person of ordinary skill in the pertinent art of snow stops any of the present claimed embodiments under the meaning of Sec. 103(a).

The Examiner's attention is directed to the Second 37 CFR 1.132 Declaration, which is submitted herewith. This declaration addresses the rejections with evidence to be given proper weight.

The Examiner's attention is further directed to the Declaration under 37 CFR 1.132 filed on April 21, 2003. Compare, salient REMARKS of the Amendment also filed on April 21, 2003.

Briefly, no disclosure of the artificial combinations suggests an advantage that would cause the ordinary artisan to modify them to arrive at the present claimed embodiments, even if they were all considered relevant. Two of the required patents, however, Corvi and Negre, are from nonanalogous arts, and cannot be applied under the meaning of Sec. 103(a). So, the rejections which employ them must fail. Clearly, moreover, impermissible hindsight reconstruction of the claims continues to have been attempted. As well, if needed to go so far as that, evidence, to include evidence of secondary considerations of patentability, verified in the declarations of Mr. Mullane must be given weight.

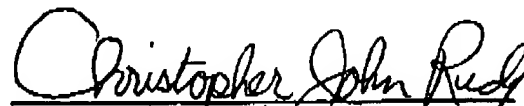
The reasoning set forth in Paper No. 6 is in serious error.

Please, therefore, withdraw these rejections.

Thus, the present application is in condition for allowance. Nevertheless, the Examiner is invited to call the undersigned to discuss the case, or to seek authorization for an Examiner's amendment. A Notice of Allowance is in order and is solicited.

Respectfully,

Dated: October 16, 2003 A.D.

  
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Encl: Second 37 CFR 1.132 Declaration

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Regarding: Michael J. Mullane  
Serial No. 09/967,250  
Filing Date 09/28/2001  
For SNOW STOP

Second 37 CFR 1.132 Declaration

Attention: Group Art Unit 3635  
Examiner Jennifer I. Thissell  
Supervisory Examiner Carl D. Friedman

Commissioner for Patents, Alexandria, VA 22313-1450:

I, Michael J. Mullane, hereby state and declare as follows:

This is the second declaration traversing rejections which I have made in the present application. I have read the 08/15/2003 Office action and patent Nos. 6,266,929 to Cline; 5,879,499 to Corvi; 5,400,552 to Negre; and 5,471,799 to Smeja et al.

As verified in my Declaration under 37 CFR 1.132 filed on April 21, 2003, I have been involved in the snow guard trade for over twenty years, first as a roofing contractor and since the early 1980s as a snow guard manufacturer; and am owner/president of the M.J. Mullane Company, Inc. Since then I have been issued another design patent for a snow stop, and thus to date have had issued as an inventor or co-inventor three utility and four design patents for various snow guards.

I stand by my Declaration under 37 CFR 1.132.

As presented in the "AF" Amendment accompanying the present declaration, the claims of my application would be as follows:

1. A snow stop comprising a base member having an underside, and a snow-restraining member connected to a top side of the base member, wherein the snow stop has a series of holes through and grooves in a cross-hatch configuration on the underside of the base member for ventilation of a suitable adhesive so that, when applied to a roof with the adhesive, "glue-rivets" can form in the holes with cured adhesive.
2. The snow stop of claim 1, wherein the holes are generally evenly spaced and are connected with the grooves, and the grooves extend to the boundary of the snow stop.
3. The snow stop of claim 2, wherein a brace supports the snow-restraining member.
9. The snow stop of claim 3, wherein the base, when viewed from a top position, is substantially in a form of a rounded square having a rear linear boundary with a length, two side linear boundaries connected and substantially normal to the rear linear boundary, and a front rounded boundary in a form of a convex arc opposing the rear linear boundary and connected to the two side linear boundaries; the snow-restraining member is substantially parallel to the rear linear boundary of the base, is positioned

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between the rear linear and front rounded boundaries of the base, and extends substantially a distance equal to the length of the rear linear boundary of the base; and the brace is substantially perpendicular to the rear linear boundary of the base, and extends forward to be connected with the snow-restraining member.

10. The snow stop of claim 1, wherein a rough or textured surface is also present on the underside surface.
11. The snow stop of claim 1, which has a ratio of the snow-restraining member to the base member of about 1:2.
12. The snow stop of claim 1, wherein the base is round and the snow restraining member is included in intersecting, upstanding members at a predetermined angle to each other.
13. The snow stop of claim 12, wherein said angle is normal.
14. The snow stop of claim 13, wherein a snow/water/ice relief opening is in each upstanding member.
15. The snow stop of claim 2, wherein the base is round and the snow restraining member is included in intersecting, upstanding members at a predetermined angle to each other.
16. The snow stop of claim 15, wherein said angle is normal.
17. The snow stop of claim 16, wherein a snow/water/ice relief opening is in each upstanding member.
18. A snow stop comprising a base member and a snow-restraining member connected to a top side of the base member, wherein the base is round and the snow restraining member is included in intersecting, upstanding members at a predetermined angle to each other.
19. The snow stop of claim 18, wherein said angle is normal.
20. The snow stop of claim 19, wherein said upstanding members have convex, circularly bounded outer boundaries.
21. A snow stop comprising a base member having an underside, and a snow-restraining member connected to a top side of the base member, wherein a series of holes are present through the base and connected with grooves under the base member to provide for ventilation of an adhesive when adhesively applied to a roof and for "glue-rivets" in the holes with cured adhesive.
22. The snow stop of claim 21, wherein a rough or textured surface is also present on the underside surface.
23. The snow stop of claim 21, wherein the grooves are in a cross-hatch configuration, and extend to the boundary of the snow stop.
24. The snow stop of claim 21, wherein the grooves have trapezoidal shapes when viewed along groove length axes.
25. The snow stop of claim 21, in combination with and adhesively affixed to a roof.

The general art or technology pertinent to my claimed invention is that of adhesively affixed snow guards or stops. A person of ordinary skill in this art would have a sufficient education and an understanding of roofing and snow-induced force.

In making my invention, I was concerned with solving problems associated with adhesively affixed snow guards. In particular, I

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was concerned with providing a solution to failure of such snow guards or stops. I was also concerned with providing a snow stop that could perform under load stress in the field faster than other adhesively affixed snow guards. I was also concerned with reducing unsightliness of carelessly oriented snow stops.

I have addressed Cline in my Declaration under 37 CFR 1.132. In addition to other things therein, my tests verified that my claimed snow stop is superior in kind to the Cline snow guards.

I may add that Cline does not have the type of rounded square base as I claim in claim 9. In light of supporting description, FIGS. 1-26, and language previously present and inherent in the claim, the structure of the base is more clearly set forth to better distinguish this. The uppermost portion of a groove is not considered to be a textured surface as I claim. This can be appreciated by any person of skill in the art, and is noted in my specification as filed, for example, in FIGS. 10, 30 and 33, where the well known rough EDM finish is disclosed for use in certain of my snow stops.

Corvi discloses a method of manufacture of a multi-lumen catheter. Corvi, as set forth at column 1, lines 44-51, relates to reinforced hollow tubes, especially arterial and venous tubes for heart-lung bypass, and a block in the aorta to stop the heart from beating. In contrast, my invention is a snow stop, not a tube nor a medical device. Corvi was concerned with solving problems related to medicine. I was concerned with solving problems related to snow stops, as noted above. No person of ordinary skill in the pertinent art of adhesively affixed snow guards or stops would look for improvements to a snow guard of the type I claim in tubular or medical arts, notably in Corvi.

Common sense says that no person of ordinary skill in the art of adhesively affixed snow stops would combine Corvi type art with Cline. Cline relates to an adhesively affixed snow guard.

Negre discloses a preventive device against nuisance from birds. Negre, as set forth at column 1, lines 7-15, relates to bird-proofing assemblies, particularly a device for preventing birds from alighting on narrow surfaces such as window sashes, sills, ledges, statues, wall ridge, roof gutter, etc. In contrast, my invention is a snow stop, not a bird-proofing device. Negre was concerned with stopping birds from alighting on narrow surfaces, and keeping the spikes of his device from being knocked off by lateral force of birds. I was concerned with solving problems related to snow stops, as noted above. In comparison to the forces exerted by sliding snow and ice on an inclined roof, the lateral force of birds is quite small. The Negre device is generally mounted on a level surface. Even if the Negre device were, out of the ordinary course of its use, mounted on an inclined roof, its spikes would not stop snow and ice from cascading down an inclined roof. Thus, no person of

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ordinary skill in the pertinent art of adhesively affixed snow guards or stops would look for improvements to a snow guard of the type I claim in bird-proofing art, notably in Negre.

Common sense says that no person of ordinary skill in the art of adhesively affixed snow guards or stops would combine Negre type art with either Cline or Corvi. Again, Corvi relates to medical arts. Cline relates to an adhesively affixed snow guard.

Even if any of these dissimilar references could be combined, their combined teachings would not suggest my claimed invention, and teach away from it. For example, Negre would suggest that a glue head 9 is sufficient to hold his device from peel and shear, since the bottom of the base of his device is flat and smooth.

Smeja et al. discloses a snow guard. It has a square or triangular base, and triangular snow restraining members. Like Cline, Smeja et al. is in the general field of my claimed invention. However, aside from the relief openings and the like, it does not add anything to any of the other references to make up for their deficiencies versus my claims. In fact, it teaches away from such things as a round base, convex, circularly bounded outer boundaries to snow restraining members, and grooves and a roughened surface on the underside of the base.

Common sense says that no person of ordinary skill in the pertinent art of adhesively affixed snow guards or stops would combine either Corvi or Negre with Smeja et al. Again, Corvi relates to medical arts, and Negre to bird-proofing devices, but Smeja et al. relates to an adhesively affixed snow guard.

As for such other features as the round base, the trapezoidal grooves, and so forth, these are not found in any reference, nor, as beneficial as I have discovered them to be in my snow stop, in other commercially available snow guards. I find it difficult to believe that the Examiner would be able to merely deem that a snow stop such as I claim would be obvious with such features.

Snow stops of my invention, notably claims 1-3, 9, 10, 11 and 21-24, continue to be sold successfully through my company.

All statements made herein of my own knowledge are true, and all statements made herein on information and belief are believed to be true. Also, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001, and further that such willful false statements may jeopardize the validity of the present application or any patent issuing thereon.

Dated: 15 October 2003 A.D.

Michael G. Mullane  
Michael G. Mullane

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